

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

MICHAEL W. ALLEN,

Plaintiff,

v.

CIVIL ACTION NO. 5:06-cv-00096

JOHN DOE, et al.,

Defendants.

JUDGMENT ORDER

Michael W. Allen, *pro se*, (“plaintiff”) brings this action under 28 U.S.C. § 1361 for an “Emergency Injunction and Restraintment.” [Docket No. 1]. On February 9, 2006, this Court referred plaintiff’s motion to Magistrate Judge VanDervort for proposed findings of fact and a recommendation (“PF&R”). [Docket No. 2]. On July 21, 2006, defendants filed a motion to dismiss, or, in the alternative, a motion for summary judgment. [Docket No. 18]. On September 18, 2006, Magistrate Judge VanDervort issued a PF&R recommending the dismissal of plaintiff’s action [Docket No. 22] because he failed to first exhaust his administrative remedies pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), before seeking redress in federal court. The Court agrees, and adopts Judge VanDervort’s recommendation.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner’s right to appeal

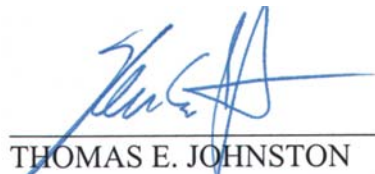
this Court's Order. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due on October 5, 2006, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court hereby (1) **DENIES** plaintiff's motion without prejudice [Docket No.1] ; (2) **GRANTS** defendants' motion to dismiss [Docket No. 18]; and 3) **DIRECTS** the Clerk to remove this action from the Court's active docket.

The Clerk is further directed to provide a copy of this Order to all counsel of record, the petitioner, *pro se*, and Magistrate Judge VanDervort.

IT IS SO ORDERED.

ENTER: January 17, 2007



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE